



**Department of
Environmental
Conservation**

FACT SHEET

For

**NEW YORK STATE
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
CWA SPDES GENERAL PERMIT
FOR
CONCENTRATED ANIMAL FEEDING OPERATIONS
(CAFOs)**

Permit No. GP-0-16-002

Issued Pursuant to Article 17, Titles 7 & 8, and Article
70 of the Environmental Conservation Law

January 2017

Page left intentionally blank

INTRODUCTION

The New York State Department of Environmental Conservation (NYSDEC) is renewing and modifying the CWA SPDES General Permit for Concentrated Animal Feeding Operations (CAFOs) as GP-0-16-002. The new CWA general permit will be effective on July 24, 2017. GP-0-16-002 replaces the previous general permit, GP-04-02 which has been administratively extended under the State Administrative Procedure Act.

GP-0-16-002 is a five (5) year permit that provides coverage for CAFOs with a discharge from their production areas to surface waters of the State. The CWA general permit also authorizes discharges of non-contact cooling water to non-trout surface waters of the State in cases where the discharge meets the characteristics outlined in the permit.

Pursuant to Section 402 of the CWA, discharges from CAFOs are unlawful unless they are authorized by a National Pollutant Discharge Elimination System (NPDES) permit or by a state permit program. New York's State Pollutant Discharge Elimination System (SPDES) is a NPDES-approved program with permits issued in accordance with the Environmental Conservation Law (ECL). Any owner or operator of a new CAFO that is eligible for coverage under this general permit must obtain coverage prior to operation of the CAFO. An owner or operator of an existing permitted CAFO that becomes eligible for coverage under this general permit must obtain coverage under this permit prior to termination of coverage under any other SPDES permit.

Commented [A1]: We understand this sentence to mean that if the CAFO is discharging, it must apply for the CWA permit immediately.

Permit transition:

CWA General Permit to CWA General Permit

Pursuant to section 401 of the State Administrative Procedure Act, and 6 NYCRR 621.11(1), GP-04-02 was administratively extended. Thus, facilities with effective coverage under GP-04-02 are eligible for continued permit coverage under GP-04-02 until the effective date of this general permit (GP-0-16-002). In order to maintain uninterrupted coverage under the CWA general permit, a completed Notice of Intent (NOI) form and Annual Nutrient Management Plan (ANMP) signed by the owner and AEM certified planner must be received by the Department within 120 calendar days from the date this general permit (GP-0-16-002) is issued. The extra time allowed for in this transition period versus the ECL general permit transition period is necessary to allow for the required public comment/hearing period, as well as to allow facilities to meet the new requirements in the revision. The process for Department review and approval, as well as public participation, is discussed in the Significant Changes below. The Department will review the completed NOI and ANMP and will notify the applicant if coverage under this general permit has been approved. Coverage does not become effective until approved by the Department.

Commented [A2]: The public comment period comes after submission of the NOI and NMP, so the 120 days would seem unrelated to that.

ECL General Permit to CWA General Permit

Pursuant to section 401 of the State Administrative Procedure Act, and 6 NYCRR 621.11(l), GP-0-14-001 was administratively extended. Thus, facilities with effective coverage under GP-0-14-001 are eligible for continued permit coverage under GP-0-14-001 until the effective date of the ECL general permit (GP-0-16-001). If a facility chooses to seek coverage under the new CWA general permit (GP-0-16-002), it must submit a completed NOI form and ANMP signed by the owner and AEM certified planner to the Department. In order to maintain uninterrupted coverage under a general permit, the Department must receive the completed NOI form and the ANMP within 120 calendar days from the date new ECL general permit (GP-0-16-001) is issued. The GP-0-16-002 process for Department review and approval, as well as public participation, is discussed in the Significant Changes below. The Department will review the completed NOI and ANMP and will notify the applicant if coverage under this general permit has been approved. Coverage does not become effective until approved by the Department.

Please note that the conditions outlined in Part II.A.4 of GP-0-16-002 also apply to facilities that want to transition between GP-0-16-001 and GP-0-16-002.

SIGNIFICANT CHANGES

Public Participation/Annual Nutrient Management Plan (ANMP): In order to address the requirements outlined in the *Waterkeeper Alliance, Inc. et al. v. EPA 399 F3d 486 (2005)* (“*Waterkeeper* decision”) and the 2012 consolidated federal CAFO Rule, the Department developed the ANMP, which is a consolidated version of the Comprehensive Nutrient

Management Plan (CNMP) that the CAFO must maintain on-site. This ANMP creates a template for farmers to follow to comply with the 2012 CAFO Rule.

The *Waterkeeper* decision held that the terms of the nutrient management plans are effluent limitations that are subject to public comment and hearing and must be reviewed and approved by the permitting authority. Eligibility for the CWA general permit is contingent on having a CNMP written by a certified planner. The New York State Department of Agriculture and Markets oversees planner certification and the quality assurance program for that certification. Each farm-specific CNMP identifies the environmental sensitivities of the farm and utilizes the technical standards set by the United States Department of Agriculture - Natural Resources Conservation Service (USDA - NRCS) to mitigate those environmental impacts (available at: <https://efotg.sc.egov.usda.gov/toc.aspx?CatID=10980>). These technical standards are the effluent limitations to be included in each farm-specific nutrient management plan. The ANMP provides an outline of the farm-specific effluent limitations in a consolidated format to allow for manageable review by both the public as well as the Department. For example, NRCS Standard NY 590 describes the protocol that must be followed when sampling fields to receive waste applications. The results of those samples, which are used to calculate the Nitrogen Leaching Index Rating and Phosphorus Runoff Index Rating for each field, are included in the ANMP. These results are used to calculate the application rates for each field, which are also made available in the ANMP. The public is given the opportunity to comment and request a hearing, on the effluent limitations when the general permit is publicly noticed. See Article 70; 6 NYCRR 621.7. Additionally, the public is given an opportunity to comment and request a hearing on the farm specific elements, when the ANMP is submitted with the NOI prior to when the facility being granted applies for permit coverage.

Commented [A3]: We suggest this language be replaced with: "... that must be adapted to develop the ..." for clarity

Commented [A4]: Suggestions to ensure consistency with permit language and for clarity.

The farm-specific ANMP must be submitted with the NOI for coverage under this CWA general permit and the availability of both will be publically noticed, comments received for 30 days, and an opportunity to request a hearing provided. Upon submission of the ANMP and NOI, the Department will have 60 days to review the documents in order to ensure compliance with permit requirements and will notify the applicant if changes are needed, or if coverage is approved. If, at any time throughout the term of the CWA general permit, the individual farm proposes an action that does not meet NRCS standards (ie. the effluent limitations established in the permits) then a revised ANMP must be submitted to the Department, made available to the public for comment and an opportunity to request a hearing provided. Part IV.F. of the permit describes these actions that warrant submission of a revised ANMP, which are consistent with the requirements of the 2012 CAFO Rule.

Commented [A5]: Clarify to make consistent with how the permit reads

Although the ANMP meets the minimum requirements outlined in the *Waterkeeper* decision, it only provides for anticipated compliance. In order to provide reasonable assurance that the anticipated compliance was fulfilled, CAFO owner/operators in NY are required to submit an Annual Compliance Report (ACR) at the end of each year. The ACR provides an opportunity for the owner/operator to outline any changes made to the CNMP throughout the year and requires certification by the owner/operator that they complied with the terms of the permit,

including the farm-specific effluent limitations. These reports are submitted to the Department by March 31st of each year and are available to the public through the Freedom of Information Law (FOIL) process (<http://www.dec.ny.gov/public/373.html>). This system of “before and after” reporting provides for transparency of the farms operations and allows for the Department, as well as the public, to gain a more complete picture of compliance. All forms related to the CAFO program, including the ACR, can be found at: <http://www.dec.ny.gov/permits/55373.html>.

Commented [A6]: Please clarify that these records will not be subject to any FOIL exemption(s). See 40 C.F.R. 122.42(e)(4). See also 40 C.F.R. 2.302.

2012 CAFO Rule adherence: The 2012 consolidated federal CAFO Rule requires owners/operators of CAFOs to indicate in their CNMP which nutrient application methodology they are following in order to provide reasonable assurance that there will be appropriate agricultural utilization of nutrients in the manure, litter or process wastewater applied to their land base. Specifically, the CAFO Rule requires adherence to either a Linear Method or a Narrative Method as described in 40 CFR 122.42(e)(5). In NY, these methods are combined to form the NRCS Standard NY 590 which incorporates Cornell's Nutrient Guidelines, including the NY Nitrate Leaching Index and the NY Phosphorus Runoff Index, and ensures appropriate agriculture utilization of nutrients. The farm-specific field-by-field requirements set by NY590 are required to be followed by all permitted CAFOs in NY and are described in the ANMP which is available to the public.

Advanced notification: Advanced notification must be made to the Department when significant operational changes are made at the facility including: 1) increasing the number of animals by 20%; or 2) constructing or expanding a liquid or semisolid waste storage facility greater than one million gallons. This information was deemed significant by the Department based on a risk to water quality and public interest, respectively. The information submitted will be made available to the public upon request.

Commented [A7]: In accordance with 40 C.F.R. 122.42(e)(6), all changes that affect the NMP must be reviewed, approved and publicized before being implemented, and substantial changes must be reviewed, approved, publicized, and subject to public comment/hearing. Neither the permit nor fact sheet clarify how members of the public will be notified about proposed NMP changes. The NYSDEC should provide clarification about how the public can learn about these opportunities to comment.

New Swine, Poultry or Veal Calf CAFO Effluent Limitations/addition of Wet Weather Standard Operating Procedures: Part I.B.1. of the permit requires CAFOs to develop Wet Weather Standard Operating Procedures (WWSOPs) as part of their CNMPs and ANMPs in order to demonstrate compliance with the no discharge effluent limit for new swine, poultry or veal calf CAFOs. These WWSOPs are those management strategies, above applicable NRCS standards, that the AEM certified planner determines the farmer must employ to prevent discharges to surface waters of the State up to, and including, the 100-year, 24-hour storm event. WWSOPs are farm-specific and may include enhanced operating and maintenance schedules, additional clean water diversion techniques during high flow events, increased containment/freeboard, extended weather forecast considerations, emergency spreading procedures, or re-routing of Best Management Practice (BMP) overflow paths during high flow events.

The 2003 Federal Register preamble described that “a CAFO may meet the zero discharge standard by designing, construction, operating, and maintaining its waste management and storage facilities to contain all manure, litter and process wastewater including the direct

precipitation and runoff from a 100-year, 24-hour rainfall event.” The Federal Register goes on to describe this criteria as providing the protection of the resource that EPA intended. [Federal Register/Vol. 68., No. 29, pg 7220 (2003)].

In 2008, EPA deleted that provision in the Federal Register as they determined a discharge beyond the 100 year storm is technically still a discharge and therefore should not be described as “zero discharge”. The 2008 CAFO Rule, however, allows for site specific evaluations to demonstrate a system to be capable of achieving the no discharge requirement. The Federal Register [Vol. 73., No. 225, pg 70460 (2008)] goes on to explain that this demonstration is designed to show that there will be no discharge from the CAFO except in exactly the circumstances provided in EPAs upset/bypass regulations. In those regulations [40 CFR 122.41(n)], an “upset” is defined as “an unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the permittee.”

The Department performed a technical evaluation for a class of specific facilities (CAFOs) within a specified geographical area (NY) and determined that an upset/bypass is beyond the reasonable control of the CAFO if the 100-year storm criteria coupled with WWSOPs are properly managed (40 CFR 122.41(n)). The Department believes that the newly required WWSOPs, when properly implemented together with the other requirements of this permit, may demonstrate that there will be no discharge from the CAFO except in exactly the circumstances provided in EPAs upset/bypass regulations.

The addition of WWSOPs to the CWA general permit is intended to clarify the no discharge criteria of this permit and is consistent with the language provided in the Federal Register and 2008 CAFO Rule.

Winter Spreading Restrictions: The Department has added a number of conditions to the CWA general permit intended to prevent water quality violations during winter conditions. Part III.A.7. of the CWA general permit provides for a ban on spreading when soils are saturated (frozen or fluid) or at a rate that exceeds the saturation capacity of that field at the time of application. In addition, conditions contained in Part III.A.7.a) - c) and Part III.B.4. were added to further address high risk situations that have resulted in water quality violations in the past. Of particular importance, Part III.A.7.b of the permit requires that the certified planner include detailed winter application procedures in their CNMP and the farmer is required to follow those procedures in order to maintain compliance with this permit.

The NRCS NY 590 Standard was updated in January 2013 to include additional restrictions on winter spreading, and is incorporated into the CWA general permit. The Department expects that these restrictions coupled with the supplementary CWA general permit conditions described above will reduce the number and severity of water quality violations resulting from winter spreading because they specifically address the source of the problems identified.

Commented [A8]: An upset requires a site-specific, affirmative showing by the permittee, and thus cannot be done for a class of facilities. This appears to conflate the class-wide technical evaluation of NSPS for swine, poultry and veal, in 40 C.F.R. 412.46(a)(1)(vii) with the site-specific showing applicable to all CAFOs under 40 C.F.R. 122.41(n).

Non-Contact Cooling Water (NCCW) authorization: Part III.B.1. of the permit provides characteristics of NCCW from CAFOs that are authorized to be discharged under this permit if the listed set of conditions are met.

Producers in the dairy industry utilize pre-coolers as an option to reduce energy costs. These pre-coolers typically use groundwater as a coolant to lower milk temperature prior to entering a refrigeration system. The NCCW generated by these pre-coolers (typically between 62-67° F) is often re-used on the farm to the maximum extent possible as drinking and/or wash water for animals, but it is common practice to add the remainder to manure storage. Adding this NCCW to manure storage is problematic for farmers as this water may take up much needed capacity.

Temperature is one of the most important variables that determine the quality of aquatic habitats; with fish species being among the most sensitive organisms for specific thermal ranges. The Water Quality Standard for Thermal Discharges and subsequent thermal discharge criteria contained in 6 NYCRR 704.1 address this point.

The Water Quality Standard for Thermal Discharges (6 NYCRR 704.1) states “[a]ll thermal discharges to the waters of the State shall assure the protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife in and on the body of water.” By requiring the discharge to non-trout waters to meet the conditions outlined in Part III.B.1. of the CWA general permit, the permit reasonably protects the classified water use and assures compliance with the standard, 6 NYCRR 704.1.

The Department also has the authority to require an application for an individual SPDES permit if a discharge is found to be noncompliant with the conditions of the CWA general permit and/or is causing or contributing to a water quality violation.

Construction Stormwater General Permit/State Historic Preservation Act (SHPA): Certain construction activities related to CAFOs may require coverage under the Construction Stormwater General Permit. Tables 1 and 2 of that permit include a list of such construction activities. The requirement to comply with SHPA is included as an eligibility criteria as part of obtaining coverage under that permit. Construction activities occurring on CAFOs with coverage under this CWA general permit are further discussed in Appendix B of the permit.

E-Reporting Rule: The Department has modified the forms associated with the permit (NOI, ACR, ANMP) to ensure all information required to be collected by the e-reporting rule is submitted to the Department. The Department will then submit this information to EPA electronically as required by the Rule.

OTHER CHANGES

The following changes were included at the request of stakeholders and/or to provide clarity to the regulated community. Based on its best professional judgement, the Department believes these changes will result in a more understandable CAFO program which will promote better compliance.

- Clarification that *New* CAFOs must have fully implemented their CNMP prior to becoming *operational* (vs. prior to submitting an NOI)
- A Change of Operation form must be submitted instead of a Change of Status form if the facility intends to increase the number of animals by more than 20% or if a manure storage structure of more than 1 million gallons will be constructed
- List of specific NRCS Standards, which are the effluent limitations
- Acquired farm implementation schedule
- Existing farms with existing practices have 12 months to get required certifications
- Limited PE evaluations for waste transfer systems
- Contractor Certification
- Single Application Rate
- Retention facilities must be designed, operated and maintained to prevent discharge to surface waters
- Barnyards isolated from a minimum 25 year storm and solids collected
- Increased farm staff education requirements (Planner on-site CNMP Review and staff attend manure applicator training)
- Recordkeeping requirements same for Medium and Large CAFOs under this CWA general permit (GP-0-16-002)
- Electronic Recordkeeping
- Definitions added: 100-year storm, Acquire, Winter Spreading Conditions, ANMP, Field, Saturated, Frozen-Saturated, Litter

Commented [A9]: Site specific practices are also effluent limitations. To clarify, these can be qualified/distinguished as "generic" effluent limitations.